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IN THE

Supreme Court of the United States

October Term, 1963

No. 353

IVAN MRVICA,

Petitioner,

—against—

P. A. ESPERDY, District Director, Immigration & Naturalization Service,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EDITH LOWENSTEIN
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IN THE

Supreme Court of the United States

October Term, 1963

No. .....

IVAN MRVICA,

Petitioner,

—against—

P. A. ESPERDY, District Director, Immigration & Naturalization Service,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Ivan Mrvica, hereinafter referred to as the "petitioner", prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit filed in the above-entitled case on May 14, 1963.

Opinions Below

The opinion of the District Court is printed at pages 7a-9a of the Appendix below and is reported in 202 F. Supp. 214. The opinion of the Court of Appeals is printed in Appendix B hereto, *infra*, pages 15-18, and is reported in 317 F. 2d 220.

Jurisdiction

The judgment of the Court of Appeals was dated and entered on May 14, 1963, Appendix C, *infra*, page 19.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question Presented

Whether a brief physical absence from the United States constitutes a break in the continuous residence required for relief under §249, Immigration and Nationality Act, solely because at the time of departure an order of deportation was pending against the alien.

Statutes Involved

The statutory provision involved is §249 of the Immigration and Nationality Act (8 U. S. C. §1259) as interpreted within the framework of §§101(a)(33) and 101(g) of the Immigration and Nationality Act (8 U. S. C. 1101(a)(33) and 1101(g)). All sections are printed in Appendix A, *infra*, pp. 13-14.[1]

Statement of Case and Disposition Below

The facts in the case are not at issue. The petitioner applied for permanent residence under 8 U. S. C. §1259. His application was denied by the respondent on the ground that although he entered the United States prior to June 28, 1940 as required by §1259(a) an interruption of his physical presence in the United States in 1942 constituted a break in his "continuous residence within the United States" as required by §1259(b)(11a).[2] The United States District Court

[1] References hereafter will be to Title 8 of the United States Code, unless otherwise indicated.

[2] Page references are to the Appendix below, unless otherwise indicated.

for the Southern District of New York agreed with this finding (7a-9a) and was affirmed by the Court of Appeals for the Second Circuit (Appendix B, *infra*, pp. 15 *et seq.*).

Petitioner, a citizen of Yugoslavia, 57 years of age, was born December 17, 1906 in Zirje, Dalmatia, at the time when that area was part of Austria-Hungary. Following World War I his birthplace became part of Italy, and after World War II it became part of Yugoslavia. He left his birthplace in 1939 and has not been there since it came under the jurisdiction of the Yugoslav government. He entered the United States on January 21, 1940 on a crewman's permit and has for all practical purposes resided in the United States since that time.

In September 1942 when World War II was at its height, petitioner underwent deportation proceedings and was ordered deported as an overstayed crewman. At that time the United States was in need of able-bodied men and the sea route to Europe was barred to ordinary traffic. Accordingly, petitioner was granted a waiver under the Ninth Proviso of §3 of the Act of February 5, 1917 for reentry into the United States as a crewman, without special permission of the Attorney General.[3]

He took one round trip to South America on the SS DUBROVSKA, the trip lasting from October 6 to December 19, 1942. By remaining on board ship, the petitioner voluntarily executed the order of deportation. He reentered the United States without difficulty by reason of the permission granted him prior to sailing.

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[3] The text of the Ninth Proviso follows:

". . . *Provided further* (9) That the Commissioner of Immigration and Naturalization with the approval of the Attorney General shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission . . ."

There is no evidence in the record that petitioner's "residence in fact" in the United States was interrupted by his short absence. He had registered for the draft in 1940 and had maintained all his ties in the United States, including his bank account and his Union membership. All parties involved, including the Immigration and Naturalization Service, were aware of the fact that the petitioner would return to the United States with the ship, since he had no travel documents which would have facilitated his landing in any other country. During the period in question deportation was impossible.

Except for the absence in 1942 petitioner has not been outside the United States since he first entered in 1940. He was again placed under deportation in 1952.

Petitioner is the beneficiary of an administrative stay of deportation in connection with *Dombrovskis, et al.* v. *Esperdy*, 185 F. Supp. 478 (S. D. N. Y. 1960), 195 F. Supp. 488 (S. D. N. Y. 1961), 209 F. Supp. 673 (S. D. N. Y. 1962), appeal pending. The issues in that case, however, have no bearing on the question raised here.

Reasons for Granting the Writ

1. The decision of the Court below now before this Court for review, deals with an important question of federal law which has not been, but should be settled by this Court.

The Court below held that 8 U. S. C. §1259 (§249 of the Immigration and Nationality Act), which permits adjustment of status to persons who entered the United States illegally prior to June 28, 1940, if the applicant for such relief "has had his *residence* in the United States continuously since such entry", is not available to an alien whose physical presence in the United States was inter-

rupted by a brief journey while he was under order of deportation.

The issue brought before this Court is whether the "continuous residence" required by §1259(b) as a matter of statutory interpretation is identical with "physical presence" where a deportation order is in existence.

The opinion of the Court below, although brief and unanimous, stated:

> "The issue is by no means as free from doubt as appellee would have us believe, since the language of §249 speaks in terms of continuous 'residence' defined as 'place of general abode'; 'principal actual dwelling place in fact, without regard to intent', and it is strenuously and plausibly argued that a merchant ship at sea in a time of worldwide naval war is hardly to be considered in retrospect as having been a 'place of general abode'" (App. B, *infra*, p. 17).

§1259 has not in general been interpreted to require uninterrupted physical presence in the United States rather than continuous residence. In that respect the wording of the provision differs from "suspension of deportation" (8 U. S. C. §1254), another adjustment of status provision for deportable aliens which requires a period of "physical presence" for statutory eligibility.[4] The distinction between "continuous residence" and "continuous physical presence" is new in the Immigration and Nationality Act and has as yet not been fully defined by the courts.[5]

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[4] 8 U. S. C. 1254 as amended October 24, 1962 (P. L. 87-885, §4) since October 1962 is not available to persons such as the petitioner who entered the United States as a crewman.

[5] See *Immigration Law & Procedure*, by Gordon & Rosenfield, Banks & Co. (1959, 1962), p. 773.

The term "physical presence" is comparatively unambiguous and is not defined by statute. "Residence" on the other hand is defined by the Immigration and Nationality Act as

> "'. . . the place of general abode; the place of general abode of a person means his principal, actual dwelling place *in fact*, without regard to intent."[6]

What is "residence", as a term of art, has been the subject of countless court interpretations, the majority of which apparently consider establishment of residence dependent on subjective intent.[7] The Immigration and Nationality Act explicitly removes the element of "intent" from the definition of "residence" for immigration purposes. The congressional intent possibly was to place into statutory language the ruling of the United States Supreme Court in *Savorgnan v. United States*, 338 U. S. 491 (1949).

In that case the question of the petitioner's citizenship depended on whether she had resided in Italy from 1941 to 1945. She claimed that she had been residing there only temporarily and not with the *intention* of establishing "permanent residence" but in the United States in which she claimed she intended to retain her permanent residence. The United States Supreme Court in discussing this contention stated at pp. 504-505:

> "The petitioner's residence abroad met the requirements of the Act of 1940. Sec. 403(a) and 104 used the terms 'residence' and 'place of general abode' without mention of the intent of the person concerned. The Act cleared up the uncertainties which had been left by early decisions as to the type and amount, if any, of

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[6] §101(a)(33), INA (8 U. S. C. 1101(a)(33)), see pp. 13-14.

[7] For a general discussion of the term "residence" see Reese and Green, "That Elusive Word 'Residence,'" 6 Vand. L. Rev. 561 (1953).

> residence abroad that was required to establish expatriation. In contrast to such terms as: 'temporary residence,' 'domicile,' 'removal, with his family and effects,' 'absolute removal' or 'permanent residence,' the new Act used the term 'residence' as plainly as possible to denote an objective fact. To identify the required 'place of residence,' it required only that it be the 'place of general abode.' . . . "[8]

The court concluded from the legislative history that it was irrelevant whether Mrs. Savorgnan *intended* to establish residence in Italy or *intended* to maintain permanent residence in the United States. Her "place of general abode" for four years had been Italy and that objective fact was considered decisive of her residence.

It is submitted that by this very reasoning, which has been codified in the Immigration and Nationality Act, petitioner's "place of general abode" was the United States ever since January 1940 and neither his intention, nor that of the respondent could change that *objective* fact. During petitioner's brief absence all parties involved knew that as a matter of objective fact he retained his residence in the United States and by necessity would return to his previous "place of general abode."

Although the issue has never reached this Court, a number of lower courts have held that for purposes of §1259 absence under an executed deportation order constitutes a break in the continuous residence contemplated by §1259 as amended. *Sit Jay Sing* v. *Nice*, 182 F. Supp. 292 (N. D. Cal. 1960), aff'd, 287 F. 2d 561 (9th Cir. 1961), and *Lum Chong* v. *Esperdy*, 191 F. Supp. 935 (S. D. N. Y. 1961).

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[8] Footnotes omitted. One footnote points out that where "permanent residence" was intended, the statute used that term. (It might be suggested that where "lawful" residence or "physical presence" was intended the statute also uses the appropriate terms.)

The foregoing cases can be distinguished because in none of them the applicant had prior to departure received permission to reapply under the Ninth Proviso of the Immigration Act of 1917. The District Court had dismissed the complaint chiefly because of the above-cited precedent and because he found the grant of Ninth Proviso relief to the petitioner irrelevant. It is respectfully submitted that the reasoning of the courts below does not stand up in the light of the humanitarian purpose of §1259 and its legislative history.

The institution of "registry" originated with the Act of March 2, 1929 (45 Stat. 1512). Then it applied to aliens who had arrived before the temporary quota law of June 3, 1921. It permitted creation of a record of lawful entry for permanent residence on behalf of those who could meet certain prescribed conditions. Its purpose was to legalize the residence of aliens who had entered improperly before that date, but whose deportation was precluded by the statute of limitations then in effect.[9] The registry statute was codified in the Nationality Act of 1940.[10] The only significant change was to advance the controlling date to July 1, 1924, the effective date of the basic quota law. The 1952 Act retained the registry provision of the 1940 Act. A person subject to deportation was not entitled to registration under that provision.[11] A revision of significance for the appellant, who prior to that date clearly was

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[9] For discussion of legislative history see Gordon and Rosenfield, *Immigration Law and Procedure*, Banks & Co. (1959) and Supplements, p. 735. See also *Senate Rept. No. 1905*, 85th Cong., 2nd Sess. (1958) to accompany H. R. 11874, which later became law. See Codification of the Nationality Laws, House Committee Print, 76th Cong., 1st Sess. (1939), p. 41.

[10] §328(b), Nationality Act of 1940 (54 Stat. 1152).

[11] *United States ex rel. Georgas* v. *Day*, 43 F. 2d 917 (2d Cir. 1930).

not covered by the statute, occurred in 1958.[11] The cut-off date for eligible aliens was advanced to June 28, 1940 (the effective date of the Alien Registration Act of 1940, 54 Stat. 670). The more significant change, however, was that the amendment eliminated the disqualification heretofore existent, of persons who are deportable. This statutory change made the benefits of the statute available to persons of good moral character, even though they were deportable, provided that they are not inadmissible as criminals, subversives or other undesirables.

A situation, such as that now before the court was not mentioned in the legislative history of the provision, but a comparative reading of §249 as enacted in 1952 and its 1958 amendment may well indicate that the interpretation urged upon this Court would not be "judicial revolt against the legislative," as suggested by the lower court in *Lum Chong* v. *Esperdy, supra,* at p. 937.

Immigration & Nationality Act of 1952	*Immigration & Nationality Act as Amended by Act of August 8, 1958*
Sec. 249(a). A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, if no such record is otherwise available and such alien shall satisfy the Attorney General that he—	(a) A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, *as of the date of approval of his application, or, if entry occurred prior to July 1, 1924, as of the date of such entry,* if no such record is otherwise available and such alien shall satisfy the Attorney General that he *is not* in-

[11] Act of August 8, 1958 (72 Stat. 546).

	missible under section 212(a), insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—[18]
(1) entered the United States prior to July 1, 1924;	(1) entered the United States prior to *June 28, 1940;*
(2) has had his residence in the United States continuously since such entry;	(2) has had his residence in the United States continuously since such entry;
(3) is a person of good moral character;	(3) is a person of good moral character;
(4) *is not subject to deportation;* and	
(5) is not ineligible to citizenship.	(4) is not ineligible to citizenship.

The above change created a statute of limitations for illegal entrants who had resided in the United States for many years and have proved themselves to be good members of their community. The legislature has indicated beyond doubt that illegality of status and deportability are not any longer considered a disqualification.

Subsequent legislation should be considered in connection with the interpretation of prior legislation upon the same subject, *Great Northern Railroad Co.* v. *United States*, 62 S. Ct. 529, 315 U. S. 262, 86 L. Ed. 836. The reverse also is true and the change in the legislation which deleted the

[18] Italicized portion in 1952 Act was deleted by amendment. Italicized portions in 1958 Act were added by amendment.

clause (4) above must be considered in the interpretation of the new statute.

Only recently on June 17, 1963 in *Rosenberg* v. *Fleuti*, Supreme Court Docket No. 248, October Term, 1962, —— U. S. ——, 10 L. Ed. 2d 1000, this Court found that a short visit to Mexico is not necessarily a "departure to a foreign port or place . . . " and return from such visit is not necessarily an "entry" within the meaning of §101(a)(13) of the Immigration and Nationality Act (8 U. S. C. 1101(a)(13)).

It is submitted that the petitioner's temporary absence, which was not even a departure to a foreign port or place, but merely a round trip on a merchant vessel during war times, does not interrupt residence for purposes of §1259.[14] The Court's conclusion to the contrary was based on a speculation totally unsupported by the legislative history that "it is difficult to credit an intent to the Congress to hold a voyage not an interruption of continuous residence when it operated as a statutory deportation" (Appendix B, p. 18). If the identical alien had been placed under deportation on the same date, but would have refused to ship out during that period, he would clearly be eligible for the relief. It is submitted that in the absence of congressional history to the contrary, it is unnecessary to impute an intention to Congress which it never expressed and which runs contra to the purpose of the provision and to the humanitarian purpose of the statute.

2. The decision of the Court below should be reviewed because the question of statutory construction discussed in

[14] The significance attributed in the opinion below (p. 17, *infra*), to §101(g), INA (8 U. S. C. 1101(g)) does not appear to prevent the applicability of §249, INA (8 U. S. C. 1259) to the instant case. It does not relate in any manner to the remedy applied for, particularly since petitioner's reentry cannot be termed illegal in view of his permission to reapply.

point "1" *supra* affects the lives of a number of persons who have resided in the United States for many years and whose deportation would be a great hardship. The fact that the Court below was aware of this is well indicated by the concluding paragraph in the opinion below:

> "We do not feel that forgiveness of illegal acts of entry before a cut off date necessitates a finding of an intent that illegal re-entry after the cut off date be also swept within the amnesty by interpreting the continuous residence requirement so that the deportation and illegal re-entry might be ignored. In short, we think Congress did not intend that two illegal periods of residence should be aggregated to make one continuous period. If the Congress should again move up the cut off date it would, of course, solve the problem of those in Mrvica's position, but that is not our province here . . ." (Appendix B, p. 18, *infra*).

It is submitted that congressional action is not necessary for cases such as that of the petitioner, if the statute is interpreted in the humanitarian spirit in which Congress had enacted it.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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36 West 44th Street
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Dated: August 1963

APPENDIX A

Statutes Involved

§249 of the Immigration and Nationality Act (8 U. S. C. 1259), §101(a)(33) and §101(g) of the Immigration and Nationality Act (8 U. S. C. 1101(a)(33) and 1101(g)).

Sec. 249 (8 U. S. C. 1259) as amended:

A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) entered the United States prior to June 28, 1940;

(b) has had his residence in the United States continuously since such entry;

(c) is a person of good moral character; and

(d) is not ineligible to citizenship.

Sec. 101(a)(33) (8 U. S. C. 1101(a)(33)):

Sec. 101(a) As used in this Act—

* * * * *

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Residence shall be considered con-

tinuous for the purposes of sections 350 and 352 of title III where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.

Sec. 101(g) (8 U. S. C. 1101(g)):

For the purposes of this Act any alien ordered deported (whether before or after the enactment of this Act) who has left the United States, shall be considered to have been deported in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

APPENDIX B

Opinion Below

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 274—October Term, 1962

(Argued March 14, 1963 Decided May 14, 1963)

Docket No. 27553

IVAN MRVICA,

Plaintiff-Appellant,

—v.—

P. A. ESPERDY, District Director, Immigration & Naturalization Service,

Defendant-Appellee.

Before:

MOORE, FRIENDLY and SMITH,

Circuit Judges.

Appeal from order denying plaintiff's motion for summary judgment, granting defendant's motion for summary judgment, and dismissing action for declaratory judgment of eligibility for record of permanent admission under Section 249 of the Immigration and Nationality Act, as amended (8 U. S. C. § 1259), and for injunction against deportation *pendente lite*, in the United States District Court for the Southern District of New York, Charles M. Metzner, District Judge. Affirmed.

EDITH LOWENSTEIN, New York, N. Y., *for plaintiff-appellant.*

ROY BABITT, Special Asst. U. S. Attorney, New York, N. Y. (Robert M. Morgenthau, U. S. Attorney for the So. Dist. of New York, on the brief), *for defendant-appellee.*

SMITH, *Circuit Judge:*

Plaintiff, a native of what is now Yugoslavia, entered the United States as a non-immigrant crewman January 21, 1940 and resided continuously in the United States thereafter, except for the period from September 4, 1942 to October 6, 1942 when he was on a South American voyage in a Yugoslav vessel as a seaman, under order of deportation, with a permit for temporary re-entry as a seaman under the Ninth Proviso of Section 3 of the Act of February 5, 1917.[1] He was again ordered deported in 1952 and presently remains here under an administrative stay pending decision in another action, *Dombrovskis* v. *Esperdy*, 195 F. Supp. 488, S. D. N. Y. 1961, appeal pending. He brought this action in the United States District Court for the Southern District of New York on June 21, 1960, under the Declaratory Judgment Act, 28 U. S. C. § 2201, and the Administrative Procedure Act, 5 U. S. C. § 1001 *et seq.*, seeking to establish his eligibility for status as a permanent re[illegible]ent under Section 249 of the Immigration and Nation-

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[1] The text of the Ninth Proviso follows:

"* * * *Provided further* [9] That the Commissioner of Immigration and Naturalization with the approval of the Attorney General shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission * * *."

ality Act (8 U. S. C. § 1259)[2] as one who had entered the United States prior to June 28, 1940, had resided here continuously since such entry, and was otherwise qualified. Plaintiff's motion for summary judgment was denied, defendant's granted, and the action dismissed by the District Court, Charles M. Metzner, District Judge, and plaintiff appeals. We find no error in the court's determination that the 1942 absence interrupted his continuous residence, within the meaning of the statutes, and we affirm.

The issue is by no means as free from doubt as appellee would have us believe, since the language of § 249 speaks in terms of continuous "residence" defined as "place of general abode"; "principal, actual dwelling place in fact, without regard to intent", and it is strenuously and plausibly argued that a merchant ship at sea in a time of worldwide naval war is hardly to be considered in retrospect as having been a "place of general abode". But in determining the meaning of the section we may not ignore the statutory framework in which it exists. Section 101(g) (8 U. S. C. § 1101(g)) provided then as now that any alien ordered deported, who has left the United States, should be con-

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[2] Sec. 249 (8 U. S. C. 1259) as amended:

"A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) entered the United States prior to June 28, 1940;

(b) has had his residence in the United States continuously since such entry;

(c) is a person of good moral character; and

(d) is not ineligible to citizenship."

sidered to have been deported pursuant to law. It is difficult to credit an intent to the Congress to hold a voyage not an interruption of continuous residence when it operated as a statutory deportation. We agree with the interpretation of the Attorney General in *Matter of P*, VIII I. & N. Dec. 167, 169 (Comm. 1958) that departure while under expulsion proceedings breaks the continuity of residence required by Section 249. Cf. *Sit Jay Sing* v. *Nice*, 182 F. Supp. 292 (N. D. Calif. 1960), aff'd 287 F. 2d 561 (9 Cir. 1961); *Lum Chong* v. *Esperdy*, 191 F. Supp. 935 (S. D. N. Y. 1961).

At the time of Mrvica's voyage in 1942, relief similar to that now provided by Section 249 (then provided to those who had been in the United States since 1924) was not granted to those subject to deportation. This limitation was, however, removed in 1958. No such exception, however, was made for those like Mrvica, whose deportation had actually occurred during the required period of continuous residence. The removal of the limitation does not affect Mrvica's continuity of residence.

We do not feel that forgiveness of illegal acts of entry before a cut off date necessitates a finding of an intent that illegal re-entry after the cut off date be also swept within the amnesty by interpreting the continuous residence requirement so that the deportation and illegal re-entry might be ignored. In short, we think Congress did not intend that two illegal periods of residence should be aggregated to make one continuous period. If the Congress should again move up the cut off date it would, of course, solve the problem of those in Mrvica's position, but that is not our province here. Judgment dismissing the complaint is affirmed.

APPENDIX C

Judgment Below

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourteenth day of May one thousand nine hundred and sixty-three.

Present:

HON. LEONARD P. MOORE, HON. HENRY J. FRIENDLY, and HON. J. JOSEPH SMITH, *Circuit Judges.*

IVAN MRVICA,

Plaintiff-Appellant,

—v.—

P. A. ESPERDY, District Director, Immigration & Naturalization Service, United States Department of Justice,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York,

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

Proof of Service

I, EDITH LOWENSTEIN, counsel for the petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 7th day of August, 1963, I served copies of the foregoing petition for writ of certiorari on the Solicitor General, Department of Justice, Washington 25, D. C., the Attorney for the Respondent, P. A. Esperdy, District Director, Immigration & Naturalization Service, by mailing copies in duly addressed envelopes, with first-class postage prepaid, to Respondent's attorney of record as follows: Robert M. Morgenthau, Esq., United States Attorney for the Southern District of New York, United States Court House, Foley Square, New York, New York, and the Solicitor General, Department of Justice, Washington 25, D. C.

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